

FILED 02/26/10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TRUSTEES OF THE PLUMBERS AND
PIPEFITTERS NATIONAL PENSION FUND,
et al.,

OPINION AND O R D E R
Civ. No. 07-1624-AA

Plaintiffs,

vs.

SHATZI INCORPORATED, dba Kodiak
Plumbing Service,

Defendant.

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AIKEN, Chief Judge:

1 On November 13, 2009, plaintiffs filed a motion for
2 summary judgment. Three months later, well beyond the eleven
3 days mandated by Local Rule to file any response, defendant,
4 represented by counsel, has not filed any opposition to this
5 motion. Plaintiffs' motion is granted.

6 BACKGROUND AND DISCUSSION

7 Plaintiffs, the Trustees of nine employee benefit plans
8 and a labor union, brought this lawsuit against defendant to
9 recover fringe benefit contributions and union dues owed on
10 behalf of defendant's employees who performed work pursuant to
11 a collective bargaining agreement ("CBA"), with the Plumbers,
12 Steamfitters and Marine Fitters Local No. 290 ("Union").

13 Plaintiffs, through Scribner, Scribner & Sutton, a
14 certified public accounting firm ("CPA firm"), conducted a
15 payroll examination of defendant's payroll books and records
16 beginning August 2003, through February 2009, in order to
17 determine whether defendant paid all contractually required
18 fringe benefit contributions on behalf of its employees who
19 performed work covered by the CBA. The CPA firm determined that
20 defendant failed to pay any amounts whatsoever to plaintiffs
21 for the work performed during the period at issue. After the
22 initial payroll examination was completed and the lawsuit at
23 bar filed, plaintiffs served interrogatories upon defendant
24 seeking information about the type of work performed by each of
25 the employees on whose behalf contributions and dues were
26 alleged to be owed. Defendant responded by noting which
27 employees performed work that fell within the craft
28 jurisdiction of the Union, i.e., the work was of the type for

1 which defendant was required to pay fringe benefit
2 contributions and union dues. Those responses allowed the CPA
3 firm to revise the payroll examination report to conform to the
4 evidence supplied by the defendant.

5 Plaintiffs now seek to recover the contributions and dues
6 that defendant should have paid as determined by the payroll
7 examination, together with liquidated damages, interest, the
8 cost of conducting the payroll examination, and their
9 attorneys' fees and costs.

10 Defendant owes the following amounts pursuant to the
11 revised payroll examination report: \$527,173.70 in fringe
12 benefit contributions and union dues; \$52,779.62 in liquidated
13 damages; \$4,707.50 in payroll examination fees; and \$163,100.16
14 in interest calculated through October 31, 2009, with interest
15 continuing to accrue at the rate of \$117.40 per diem for each
16 day on and after November 1, 2009 that the contributions and
17 dues remain unpaid.

18 In the event fringe benefit contributions are not paid by
19 the due date, the Trust Agreement that created the Funds
20 (National Pension Fund, Local Pension Fund, Health Fund,
21 Retiree Health Fund, Vacation Fund, Training Fund, Scholarship
22 Fund, Education Fund, and Management Fund) provides that
23 liquidated damages will be assessed in an amount equal to 10%
24 of the delinquent or late paid pension contributions.¹

25 The Trust Agreements that created the Trust Funds provide

26
27 ¹ The Management Fund provides liquidated damages in an amount
28 equal to 20%, however, the Fund has a practice of assessing
liquidated damages in an amount equal to 10% of the delinquent
or late paid contributions.

1 that they are entitled to recover their attorneys' fees and
2 accountants' fees when necessarily incurred to collect
3 delinquent fringe benefit contributions. The CBA provides that
4 the Union is entitled to recover its attorneys' fees and
5 accountants' fees when necessarily incurred to collect
6 delinquent union dues.

7 Daniel Eldridge operated "Kodiak Plumbing Service" as a
8 sole proprietor beginning March 1999, then incorporated Shatzi
9 Enterprises, Inc., in February 2001, and ultimately formed
10 Shatzi Incorporated in February 2002. Shatzi Incorporated did
11 business under the trade name of "Kodiak Plumbing Service"
12 until March 2009, at which time Mr. Eldridge (and his wife)
13 again became a sole proprietor using the trade name of "Kodiak
14 Plumbing Service."

15 Effective May 1, 1999, Mr. Eldridge signed a Compliance
16 Agreement for Master Labor Agreement with the Union. Based on
17 the terms of that Agreement, Mr. Eldridge agreed to be bound by
18 the Trust Agreements that created the Trust Funds, and agreed
19 to pay contributions and union due to plaintiffs on behalf of
20 his plumbers who performed work covered by the CBA beginning
21 April 1, 1997, to March 31, 2003. The Compliance Agreement and
22 CBA remained in full force and effect through March 31, 2003,
23 after which time the defendant continued to be bound by the
24 Compliance Agreement and CBA from April 1, 2003, through March
25 31, 2009, due to defendant's failure to effectively terminate
26 the parties' contractual relationship. See Trustees of the
27 Plumbers and Pipefitters Nat'l Pension Fund, et al. v. Daniel
28 W. Eldridge, et al., CV 03-1213-JO, Findings of Fact and

1 Conclusions of Law, p. 3 (in previous lawsuit involving same
2 parties and facts, court found defendant liable to plaintiffs
3 despite fact that defendant had not signed the CBA). See also,
4 Plumbers & Pipefitters v. Eldridge, et al., 232 Fed.Appx. 680
5 (9th Cir. 2007) (Shatzi Incorporated's obligations under the CBA
6 did not end as of March 21, 2003).

7 Defendant's Responses to Interrogatories acknowledge that
8 the individuals identified in the revised payroll examination
9 report for whom plaintiffs seek to recover fringe benefit
10 contributions and union dues were employees of defendant, that
11 the unreported hours were actually worked for defendant, and
12 that the unreported hours were worked within the "craft"
13 jurisdiction of the Union. Defendant failed to report those
14 hours, and failed to pay fringe benefit contributions and union
15 dues based on those hours.

16 CONCLUSION

17 Plaintiffs' motion for summary judgment (doc. 56) is
18 granted as follows: based on the 34,856.75 hours worked by
19 defendant's employees for the time period August 2003, through
20 February 2009, plaintiffs are entitled to recover the following
21 amounts from defendant: \$527,173.70 in fringe benefit
22 contributions and union dues; \$52,779.62 in liquidated damages;
23 and \$163,100.16 in interest calculated through October 31,
24 2009, with interest continuing to accrue at the rate of \$117.40
25 per diem for each day on and after November 1, 2009 that the
26 contributions and dues remain unpaid. Plaintiff is also
27 entitled to recover a reasonable payroll examination fee from
28 defendant, here, the amount of \$4,707.50. See 29 U.S.C.

1 502(g)(2)(E) (the court shall award the plan "such other legal
2 or equitable relief as the court deems appropriate.").
3 Finally, plaintiffs are entitled to recover reasonable
4 attorneys' fees and costs from defendant. Plaintiffs may
5 submit an attorney fee petition to the court upon the close of
6 this litigation. 29 U.S.C. 502(g)(2)(D) (the court shall award
7 the plan "reasonable attorneys' fees and costs of the action,
8 to be paid by the defendant.").

9 Plaintiffs' request for oral argument is denied as
10 unnecessary.

11 IT IS SO ORDERED.

12 Dated this 25 day of February 2010.

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17 Ann Aiken
18 United States District Judge
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